

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of

**PUERTO RICO TELEPHONE COMPANY**

Petition for Declaratory Ruling Regarding  
Implementation of Local Number  
Portability and Number Pooling

CC Docket No. 95-116

**OPPOSITION OF THE  
TELECOMMUNICATIONS REGULATORY BOARD  
OF  
PUERTO RICO**

**THE TELECOMMUNICATIONS REGULATORY  
BOARD OF PUERTO RICO**

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## **Summary**

The Telecommunications Regulatory Board of Puerto Rico opposes the Petition for Declaratory Ruling filed by Puerto Rico Telephone Company. In that Petition, PRTC asks the FCC to preempt an Order of the Board which required PRTC to implement federal Local Number Portability requirements without eliminating a billing and marketing practice known as Reverse Toll Billing.

The Board opposes the Petition because it disagrees with PRTC's contention that Reverse Toll Billing is technically incompatible with Local Number Portability. In fact, PRTC is currently complying with LNP while retaining Reverse Toll Billing by maintaining each number's original – or “native” – rate center for billing purposes. This approach is consistent with the guidance given by the FCC on November 20, 2003. Further, the Board found PRTC claims of technical incompatibility not to be credible.

The Board also believes that PRTC is wrong when it claims that Reverse Toll Billing is unreasonably discriminatory given the public interest found in maintaining Reverse Toll Billing while transitioning to a new environment.

For these reasons, the Board asks the FCC to deny the PRTC Petition.

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The Telecommunications Regulatory Board of Puerto Rico (“the Board”), by its attorneys, hereby opposes the Puerto Rico Telephone Company (“PRTC”) Petition for Declaratory Ruling (“Petition”) filed on November 26, 2003 with the Federal Communications Commission (“FCC” or “Commission”). In its Petition, PRTC asks the FCC to declare that a November 20, 2003 Order of the Board is preempted by federal law. That Order required PRTC to keep in place a billing and marketing practice known as “Reverse Toll Billing” (“RTB”) while, complying with federal Local Number Portability (“LNP”) and Number Pooling requirements.<sup>1</sup> PRTC claims that it is technically impossible to do both and that, therefore, preemption is required. The Board strongly disagrees and asks the Commission to deny PRTC’s request.

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<sup>1</sup> Under PRTC’s version of Reverse Toll Billing, PRTC and the wireless carrier mutually agree to bill the wireless carrier, rather than the originating wireline consumer, for any long distance charges associated with a wireline to wireless call. The agreed upon wholesale rate is considerably less than would have been charged the retail consumer for intra-island long distance service.

## **I. BACKGROUND**

### **A. The Board**

The Telecommunications Regulatory Board of Puerto Rico was created in 1996 by the Legislature of Puerto Rico as an independent entity endowed with the power and authority to facilitate the improvement of telecommunications in Puerto Rico, to promote fair and effective competition and to detect and correct anti-competitive conduct. The legislation creating the Board, known as Act 213 of September 12, 1996, gave the Board powers necessary to regulate the provision of telecommunications in Puerto Rico and provided the following general guidance:

All actions, regulations and determinations of the Board shall be guided by the Federal Communications Act, by the public interest and, especially, by the protection of consumer rights.<sup>2</sup>

In considering the difficult questions presented by Puerto Rico Telephone Company's sudden, unilateral attempt to terminate RTB, the Board has followed that guidance. Indeed, the Board's November 20 Order, the proximate subject of the PRTC Petition, balances the federal law, the public interest, and consumers' rights. That Order (included as an attachment to the PRTC Petition) was the result of a considered hearing, including oral and written pleadings and testimony from a variety of telecommunications providers. Ultimately, the Board determined that PRTC could comply with the federal requirements regarding Local Number Portability ("LNP") without eliminating RTB, that the public interest would be negatively affected by disruptions in the network and by unilateral abrogation of interconnection agreements resulting from the elimination of RTB, and that consumer rights were impinged by the elimination of RTB

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<sup>2</sup> Act No. 213, 12 September 1996, Article 7(f)

as proposed by PRTC. Thus, the Board ordered PRTC to implement LNP and not eliminate RTB, consistent with the Board's November 20, 2003 Order.<sup>3</sup>

In doing so, the Board kept faith with the guideline provided by the Legislature and, in particular, complied with the heavy emphasis on protection of consumer rights. It was apparent that sudden elimination of Reverse Toll Billing would have caused considerable confusion and would have resulted in a transformation of local charges to long distance charges, without adequate justification or preparation.

B. The Reverse Toll Billing Proceeding

The Board's Case No. JRT-2003-CCG-006 was prompted by a September 19, 2003 letter from PRTC notifying the Board that PRTC would "eliminate the provision of reverse billing concurrent with the implementation of intermodal LNP."<sup>4</sup> PRTC also stated that it would "notify" wireless carriers of the elimination of certain clauses associated with RTB in existing interconnection agreements. Further, PRTC provided suggested language for the Board to use to communicate to the public the changes associated with the elimination of RTB.

This letter was considered by the Board as part of Case No. JRT-2000-CCG-0001, a proceeding which had been instituted by the Board in 2000 to act as facilitator to consider intra-state issues relating to Local Number Portability. Not once in the course of this long proceeding had PRTC intimated or raised the issue of Reverse Toll Billing. Rather, PRTC simply presented the Board with a *fait accompli*, with virtually no time to consider the ramifications of the elimination of Reverse Toll Billing. Subsequently, and with only a short time remaining before the implementation of LNP, PRTC notified the Puerto Rico Commercial Mobile Radio Service

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<sup>3</sup> The Board also scheduled a January 15, 2004 public hearing to consider the impact of the implementation of a change in local calling zones on the elimination of RTB.

<sup>4</sup> Letter of Jon E. Slater, President, PRTC, September 19, 2003 (Attachment A).

(“CMRS”) providers of its intentions. To the CMRS providers with interconnection agreements, this sudden notice represented a unilateral abrogation of the agreements upon which they had based their business plans and marketing approaches.

Prominent in PRTC’s proposed message was the notification that the elimination of a “wholesale product offered by wireline companies to wireless carriers” could increase the amounts that consumers pay to call wireless phones from wireline phones. At the heart of the elimination of RTB is an increase in the cost of calling a non-local wireless number. At present, under Reverse Toll Billing, the wireline customer does not pay to call a non-local wireless number within Puerto Rico, effectively making all of Puerto Rico a single market in wireless service on a retail level. The elimination of Reverse Toll Billing would add toll charges, estimated at between 10 to 17 cents a minute, for such calls. Clearly, the impact of the unilateral elimination of RTB would be keenly felt by the consumer. In addition to a significant increase in cost, the elimination of RTB may require a new dialing pattern, including use of the prefix “1” for all calls outside of the wireline NPA-NXX.

Immediately after PRTC made public its intention, a strong and intensive public, media and governmental reaction occurred. The Puerto Rico Consumer Affairs Secretary expressed his firm opposition to any increase in charges by PRTC. Further, the press in San Juan covered the issue intensively. In addition, the Board received numerous public inquiries and expressions of opposition. Even the legislature became involved, offering a law that would have prevented PRTC from eliminating RTB. (See Attachment B)

Recognizing that the issue was of significance public interest and importance, the Board created a docket separate from the general LNP docket to consider only the question of elimination of Reverse Toll Billing, Case No. 2003-CCG-006. The Board considered Reverse

Toll Billing not as one of the issues involved in the implementation of Local Number Portability, but rather as a billing and marketing matter. RTB had been devised as a way for wireless carriers to offer an island-wide service to attract customers. It evolved as a “billing” provision in local interconnection agreements. The Board therefore believed that the elimination of Reverse Toll Billing was a matter which the FCC had specifically left to the States in its 1996 Local Number Portability decision.<sup>5</sup>

On October 9, the Board held a public hearing in this docket at which PRTC alleged that the implementation of Local Number Portability, mandated by the FCC, requires a change in call routing. This makes RTB technically incompatible with both Local Number Portability and with federal requirements for number pooling, according to PRTC. Further, the fact that its parent company, Verizon, had eliminated RTB supported its position of technical incompatibility.

Other companies, particularly those with interconnection agreements at stake, disagreed in written comments. Centennial de Puerto Rico, for example, argued that a method of number verification, Local Routing Number (“LRN”), could be used to overcome any claimed technical incompatibility between LNP and RTB. Centennial also argued that the controversy is not about technical incompatibility, but about increasing revenues since, with the elimination of RTB, PRTC would receive access charge payments for non-local calls, instead of the lower wholesale rate paid by the wireless carriers pursuant to their interconnection agreements.

Other carriers, such as Cingular, Telefonica Larga Distancia and AT&T Wireless, also opposed PRTC, arguing that PRTC had not adequately addressed technical issues, and that more time is needed to make whatever changes and notifications are necessary.

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<sup>5</sup> *In the Matter of Telephone Number Portability*, 11 FCC Rcd 8352 (1996) at para 63.



In Reply, PRTC argued that Reverse Toll Billing must be eliminated in order to comply with the FCC's LNP and pooling requirements, and that elimination must occur on November 24, 2003, the date on which PRTC would be required to begin porting wireless carriers, and pooling certain affected numbers. PRTC saw no alternative since, in its judgment, it simply could not comply with federal requirements and maintain RTB.

The Board's November 20, 2003 Order forms the crux of this Proceeding. After considering the arguments of all the parties, the Board determined that the actions proposed to be taken by PRTC were inappropriate. First, the Board found that the FCC's decision on Local Number Portability and pooling did not consider in any way the impact those decisions might have on Reverse Toll Billing. Thus, there is no specific bar to the continuation of RTB after the introduction of porting and pooling.

The Board then considered other matters, including network configuration, the integrity of interconnection agreements, investment, and notification procedures. In each of these matters, the Board found that the sudden elimination of RTB would have negative effects. Finally, the Board found that PRTC had not produced substantial evidence of a technical impairment forcing it to eliminate RTB.

Accordingly, PRTC was ordered to implement LNP without eliminating RTB.

#### C. The Petition

Shortly after the November 20 Order, PRTC filed its Petition for Declaratory Ruling. PRTC repeated its argument that Reverse Toll Billing is technically incompatible with intermodal LNP and pooling. It stated that it will comply with the Board's Order with respect to numbers previously assigned to wireless carriers (so-called "native" wireless numbers), but not with respect to previously wireline numbers that are now ported to wireless customers. This

approach, while compliant, defeats the purposes of porting and pooling and causes unreasonable discrimination in violation of Section 202 of the Communications Act, according to PRTC.

D. Post-Petition Activities

The Board's November 20 Order specifically recognized the importance of a future event on Reverse Toll Billing and set a public investigative hearing on January 15, 2004 for the purpose of considering how changes to local calling zones and rate centers would impact the elimination of RTB. At the time of the November 20 order, PRTC organized the Commonwealth of Puerto Rico into 68 local calling areas, each covering a relatively small area. As a result, a call of relatively short distance between these calling areas would be considered a "toll," or long-distance call and would be affected by changes to the Reverse Toll Billing arrangements. However, PRTC had announced plans to reduce the 68 local calling areas to 10, a move that would be more consistent with the practice of other local exchange carriers in Puerto Rico who offered much larger local calling areas.

The first changes to the local calling dialing patterns are occurring in early 2004. The transformation to 10 local calling areas is expected to be completed by the end of 2004. Thus, the number of non-local wireline to wireless calls – those calls affected by the elimination of Reverse Toll Billing – would be reduced as the number of local calling areas is reduced.

Another important fact coming out of the January 15 hearing concerned the number of people who had requested intermodal local number portability since it became available on November 24, 2003. Out of the approximately 1.3 million wireless subscribers in Puerto Rico, only 14 had requested that their numbers be ported to a wireless service. The Board was surprised to learn of the very small number of consumers who had requested LNP, particularly in light of the presumed pent-up demand for the service.

The two important facts to come out of the January 15 hearing – that time would ameliorate the RTB problem and that there is *de minimis* demand for LNP – served to affirm the Board’s November 20, 2003 Order. As will be discussed below, PRTC’s two arguments – technical incompatibility and discriminatory treatment – do not support the elimination of Reverse Toll Billing at this time.

## **II. ARGUMENT**

### **A. Reverse Toll Billing Is Not Incompatible With Federal Local Number Portability and Pooling Requirements.**

#### **1. PRTC Currently Is In Compliance.**

The principal argument that PRTC makes in its Petition is that RTB is technically incompatible with federal portability and pooling requirements. Previously, PRTC could look at an NPA-NXX and immediately know which carrier it belonged to and could then “rate” the call according to the interconnection agreement it had with that carrier. In the new era of porting and pooling however, no such quick look suffices. Therefore, PRTC has decided that all non-local calls will be passed to the presubscribed intra-island carrier of the wireline customer.<sup>6</sup> All such calls will be subject to toll charges, no matter what the terms of the interconnection agreement say, no matter the confusion and expense caused to the consumer.

PRTC is plain wrong when it says Reverse Toll Billing cannot be done in a pooling and porting environment. PRTC is doing it. In the Petition, PRTC:

... emphasizes that it has implemented intermodal LNP and pooling in compliance with the Commission’s deadlines, and all calls to and from ported and pooled numbers are being routed appropriately and without delay.<sup>7</sup>

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<sup>6</sup> A non-local call is a call with a different rate center and a different exchange area than the originating rate center and exchange area. Obviously, in a wireless environment, the notion of actual geographic location is not relevant.

<sup>7</sup> Petition at p. 2.

Yet, PRTC is also complying with the Board's Order and has not eliminated Reverse Toll Billing. Thus, according to PRTC's own actions and affirmations, RTB is not technically incompatible with Local Number Portability.

The method PRTC has chosen to retain RTB is simple: maintain the *status quo*. That is, ported numbers are being rated in accordance with their original – or “native” – rate center.<sup>8</sup> But this solution is fatally flawed, according to PRTC, because it must provide RTB for all numbers in that NPA-NXX. Consequently, wireline customers who as a result of porting or pooling have a “wireless” NPA-NXX will benefit from Reverse Toll Billing, while wireline customers ported to a wireless carrier would not.

The Board recognizes that perhaps over a long period, this is not the best solution. But, in the short term, it is not only a good solution, it is completely compatible with federal requirements. Shortly before the Board issued its November 20 Order, the FCC addressed a similar issue in a Memorandum Opinion and Order designed to resolve a variety of LNP implementation issues.<sup>9</sup> In considering a dispute between Bellsouth and Sprint over the rating and routing of calls to ported numbers the Commission found that

To ensure that permitting porting beyond wireline rate center boundaries does not cause customer confusion with respect to charges for calls, we clarify that ported numbers must remain rated to their original rate center.<sup>10</sup>

The Board takes this to mean that PRTC's “native” solution is the preferred FCC solution as well and thus is not at all incompatible with federal requirements.

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<sup>8</sup> A rate center is that point within an exchange area defined by rate map coordinates used as the primary basis for the determination of toll rates. *See Newton's Telecom Dictionary*, 18<sup>th</sup> Update, February, 2002.

<sup>9</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, FCC 03-284, November 10, 2003, (“November Order”).

<sup>10</sup> *November Order* at para 39.

2. Reliance on PRTC's "Technical Incompatibility" Agreement is Misplaced.

In addition to the present apparent compatibility of RTB and LNP, PRTC's argument is lacking in credibility. First, the Commission should recognize that the entity most likely to benefit from the elimination of Reverse Toll Billing is PRTC. Over 51% of all wireline customers are presubscribed to PRTC or its affiliate. Consequently to the extent non-local traffic is routed to a toll carrier, most of the time PRTC will be that carrier. Further, PRTC will receive access charges on the wireline to wireless calls. While we do not agree with Centennial's characterization in the October hearing of this matter as a *de facto* \$250,000,000 rate increase for Puerto Rico consumers, the Board does recognize PRTC's economic incentive to eliminate Reverse Toll Billing. It is understandable that, rather than search for a technical solution that would allow for Reverse Toll Billing, PRTC would declare defeat and prepare to reap the benefit.

Another assault on PRTC's credibility comes from the September 19, 2003 letter from Jon Slater, then President of PRTC. That letter included a "Proposed Message on the Elimination of Reverse Billing."<sup>11</sup> It was apparently PRTC's notion that the Board could use this message to communicate the elimination of Reverse Toll Billing. Included in the message is the following statement, referring to the elimination of Reverse Toll Billing:

An investment to keep the service in place after the implementation of WLNP would make the cost of the wholesale service prohibitive<sup>12</sup>

PRTC's protest that RTB is technically incompatible with LNP is thus revealed to be a matter of money, not technology.

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<sup>11</sup> See Attachment A.

<sup>12</sup> *Id*

Moreover, during the hearing phase of the Board’s proceeding, PRTC had the opportunity to present evidence on the question of overall technical incompatibility. In the Board’s judgment, PRTC failed to carry the burden of proof on this issue. In fairness, no other carrier provided conclusive evidence on the technical issues. However, PRTC’s failure to make a compelling case for long-term (and short-term) technical incompatibility formed the basis of the Board’s decision.

In sum, while there are constraints to the growth of RTB in a pooling and porting environment, it is apparent that maintaining the *status quo* – through “native” RTB – is both technically feasible and entirely compatible with federal requirements. Indeed, “native” RTB appears to be the FCC’s required solution. Further, PRTC lacks credibility in asserting that there is “technical incompatibility.” For these reasons the Board urges the FCC to find that there is no technical impediment to maintaining Reverse Toll Billing, consistent with the requirements in the November Order.

B. Compliance With the Board’s Order Does Not Result in Unreasonable Discrimination.

PRTC’s second argument is that its “native” solution will discriminate against wireless customers that receive native wireline numbers on their wireless phones (and are thus not eligible for RTB) by charging more for calls to them than to “native” wireless customers. This will, in PRTC’s judgment, “serve as a powerful incentive” not to port and to reject a pooled number. Thus, according to PRTC, not only is there discrimination, but the “native” solution undermines the objectives of porting and pooling: reducing barriers to switching carriers and ensuring sufficient number resources.<sup>13</sup>

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<sup>13</sup> Petition at 9.

Whether or not there is discrimination inherent in the “native” solution, the Board believes it is not discrimination in violation of the Communications Act, which prohibits only “unjust and unreasonable” discrimination. Nor are the objectives of pooling and porting undermined by use of the original rate center – the “native” solution.

There is a familiar three-prong test to determine whether discrimination has occurred in any given case: (1) whether the services are like; (2) whether there is disparate treatment; and (3) whether the disparity is justified.<sup>14</sup> PRTC argues that because of the different treatment of similarly situated wireless customers – one ported and not subject to RTB, the other “native” and subject to RTB – there is clear discrimination.<sup>15</sup> As a preliminary matter, the Board questions whether any discrimination occurs between ported and non-porting customers, since Reverse Toll Billing refers to an advantage received by the wireline customer who does not pay long distance charges for calls to a wireless customer, not to an advantage received by the ported or non-porting customer.

Notwithstanding our questions regarding whether any discrimination exists, the Board is confident that whatever disparity may be caused by temporary reliance on the “native” rate center solution, it is entirely justified by the circumstances surrounding the proposed elimination of Reverse Toll Billing. Maintaining the *status quo* while the transition to larger local calling areas is made, while the consumer is made familiar with new dialing patterns and charges, and while interconnection agreements are renegotiated, would serve the public interest. Certainly, maintaining the *status quo* while parties search for a more permanent technical solution is a reasonable justification for the *de minimis* disparate treatment potentially to be suffered.

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<sup>14</sup> See *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30 (D.C. Cir. 1990)..

<sup>15</sup> The opposite case of a wireline customer ported from a wireless carrier receiving RTB would also apply.

Similarly, a temporary prohibition on the elimination of Reverse Toll Billing does not undermine the objectives of the federal rules. Consumer porting between wireless carriers would not be affected by the “native” solution since all such customers can continue to be reached via a native wireless NPA-NXX and thus take advantage of RTB. A customer porting from a wireless carrier to a wireline carrier would similarly be reached via his or her native NPA-NXX and would be unaffected. Only a customer ported from a wireline carrier to a wireless carrier would be deprived of the billing advantage conferred by RTB. However, since that customer has never enjoyed the advantage and since seeking the advantage will not factor into her decision making, it is unclear how this would undermine the Commission’s pooling and porting requirements.<sup>16</sup>

PRTC finds this latter case a “strong disincentive” to port because a new wireless customer would not share the advantages of a “native” wireless customer.<sup>17</sup> However, customers sign up for wireless plans that often differ from plans offered to other wireless customers without engaging in the kind of sibling rivalry that PRTC sees as a strong disincentive. In short, a decision to port from a wireline to a wireless carrier will be based on a number of factors, including reliability, coverage and price. We sincerely doubt whether the decision will be based on the idea that “another wireless customer gets to have RTB and I don’t!”

For these reasons, the Board does not believe that maintaining Reverse Toll Billing is either unreasonably discriminatory or a contradiction of the Commission’s rules.

C. Unilateral Elimination of Reverse Toll Billing Provisions Violates State and Federal Requirements

PRTC’s plan to unilaterally abrogate its interconnection agreements is itself a violation of Puerto Rico Law No. 213 and the Communications Act. Under Article 5(e) of Law 213, the

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<sup>16</sup> We remind the Commission that between November 24, 2003 and January 15, 2004, a total of 14 people requested portability to a wireless service.

<sup>17</sup> Petition at 10.



Board is required to approve interconnection agreements including each of PRTC's agreements containing Reverse Toll Billing provisions. Similarly, Section 252(e) of the Communications Act requires state approval. Such approval is meaningless if one party to an agreement has the unilateral right to decide when compliance with an approved provision is no longer convenient or "compatible." Typically "change of law" provisions in interconnection agreements require that the parties renegotiate the agreement and submit any amendments for approval. If the parties cannot agree, there are often provisions that require a proceeding before the Board or the FCC.

In this case, PRTC alone decided that the implementation of Local Number Portability required the elimination of Reverse Toll Billing. However, the matter is not so clear cut. The CMRS carriers disagree with PRTC, as does the Board. Further, PRTC is unable to point to any FCC ruling that says definitively that RTB and LNP are incompatible.

In these circumstances, any effort by PRTC to eliminate RTB is an attempt to delete a provision of an approved interconnection agreement, without consultation with any other party and without approval from the Board. This effort violates state and federal requirements concerning Board approval.

D. The November 20 Order Is Not Preempted.

As the Board has demonstrated, there is no conflict between the November 20 Order and the Commission's LNP and pooling requirements. Nor does the Order cause unreasonable discrimination. Because the Commission will not find any conflict, preemption is unwarranted.

### **III. CONCLUSION**

For these reasons, the Telecommunications Regulatory Board of Puerto Rico respectfully requests that the Commission deny PRTC's Petition for Declaratory Ruling.

Respectfully submitted,

THE TELECOMMUNICATIONS REGULATORY  
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## **ATTACHMENT A**

## **ATTACHMENT B**